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JAN 27 2004

**OFFICE OF PETITIONS**

In re Application of  
William J. O'Connell, et al.  
Application No. 09/954,677  
Filed: September 15, 2001  
Attorney Docket No. 061300-0242

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed January 9, 2004, to revive the above-identified application.

The application became abandoned for failure to timely respond to a Notice to File Missing Parts (Notice) mailed October 16, 2001. The notice required the statutory basic filing fee, an oath or declaration under 37 CFR 1.63 and the requisite surcharge. Since no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the application became abandoned on December 17, 2001. A Notice of Abandonment was mailed on November 10, 2003. In response, on January 9, 2004, petitioner filed the present petition, the requisite filing fee and surcharge, and a partially executed declaration.

The petition is **DISMISSED**.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee required by 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above.

The Office acknowledges receipt of the statutory basic filing fee and the \$130.00 surcharge on January 9, 2004. However, petitioner did not submit a properly executed declaration in compliance with 37 CFR 1.63, as required by the Notice mailed October 16, 2001. While the declaration of Attorney James A. Wilke includes a statement that joint inventor Harowitz cannot be contacted and joint inventor O'Connell is refusing to sign, this statement alone is not sufficient for acceptance of a declaration without the signatures of all the joint inventors. Petitioner's attention is directed to 37 CFR 1.47(a) which provides for acceptance of a declaration without the signatures of all the joint inventors.

The above-identified application cannot be revived until a proper declaration under 37 CFR 1.63 is filed or a grantable petition in compliance with 37 CFR 1.47(a) is submitted.

Application No. 09/954,677

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)", and the missing items noted above. Petitioner is advised that this is not a final agency decision.

Further correspondence with respect to this matter should be addressed as follows:

**By Mail:** Mail Stop PETITION  
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**By Hand:** 2011 South Clark Place  
Crystal Plaza Two, Lobby  
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The centralized facsimile number is (703) 872-9306.

Any questions concerning this matter may be directed to the undersigned at (703) 305-9220.

*Sherry D. Brinkley*  
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Petitions Examiner  
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